* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 1305/2005

Reserved on : March 14, 2007
Decided on : April 18, 2007

PEPSI FOOD PVT. LTD. AND ANR. ..... Petitioners
Through Mr. Rajesh Batra, Ms. Sonia Kukreja, Advocates

versus

EXPORT INSPECTION AGENCY ..... Respondent
Through Mr. R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal, Mr. Pawan Mittal, Ms. Akanksha Verma Chandok, Advocates

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported
4. in the Digest? Yes

Mr. Justice S. Ravindra Bhat

1. This petition, seeks quashing of the order of charge dated 14.10.2003 passed by the Metropolitan Magistrate ("the trial court") in Complaint Case No. 3170/1993.

2. The brief facts necessary to decide this petition are that the 1st

petitioner (hereinafter referred to as “the Company”) is a large exporter of rice in the country. The 2nd petitioner was employed as General manager, Corporate Affairs with the company. The company exports Basmati Rice to USA and other countries. The respondent, complainant, (referred to as "the complainant" or "the respondent") is a statutory body constituted under the Export (Quality Control & Inspection) Act, 1963, (hereafter called "the 1963 Act").

3. On 31.8.1991, Director (Inspection and Quality Control) communicated to the company that the Monthly Import Detention List forwarded by the Dept. of Health and Human Services, Food and Drug Administration, Washington, USA, had detained Basmati Rice exported in the January-February 1991 on account of insect and rodent filth. The petitioner alleged that the Director demanded information as to where the rice was processed and a reply to this was furnished. However, no further communication was received from the export inspection agency.

4. The petitioners allege that the Export Inspection Agency (hereinafter referred to as “the Agency”) filed a complaint against them under Section 11 of the1963 Act. It was alleged in the complaint that the Central Government after consulting the Export Inspection Council promulgated the Export of Basmati Rice (Quality Control & Inspection)

Order, 1963 (hereafter "the Order"). The order compelled every exporter of Basmati Rice to obtain a certificate of quality from one of the four stipulated agencies. These included AGMARK (Agricultural Marketing Adviser to the Govt. of India).

5. The petitioners further allege that the complainant relied upon a report of detention received from the US Food and Drug Administration (USFDA) and correspondence between the parties with respect to the export consignment. They further allege that the complaint is devoid of any particulars or details of export and it that relied upon the report received by USFDA to establish that some export was made by it. The petitioner stated that the consignment was inspected by the Agency. It is also alleged that the complainant had similarly filed another complaint, which was dismissed in default.

6. The petitioners filed two applications before the trial court; one was for discharge, where it was stated that the company had exported 80 M.T. of Basmati Rice between October 1990 and January 1991, for the said consignments certificate of quality was obtained from AGMARK in accordance with the procedure, had been obtained. During the hearing of the application, it was stated, even assuming the export was established by report of USFDA to the tune of 176000 pounds of

Basmati Rice, that was not suggestive that the exports were made from India after 29.9.1990. The petitioners further state that the trial court had taken the AGMARK certificates on record and ruled that they should be proved during trial.

7. Learned counsel for the petitioner argued that the complainant has to establish the specifics of the export that there was an export within the specific period, which amounted to an offence according to the law then in force. Secondly, it had to establish that no certificate of quality was obtained by the exporter from any of the four specified agencies. The petitioner company already had 3 AGMARK certificates, and taken in totality, the complainant would be unable to establish its case. Consequently, the complaint deserved to be quashed.

8. The trial court in its order dated 14.10.2003 rejected a request by the company for recall of the summoning order. The extracts of the said order are as follows:

> *"The above elicited grounds for recalling of the summoning order are such which at this stage cannot be ascertained unless the parties in contest are afforded reasonable opportunity to prove their case. Even the authenticity of document relied upon by accused No.2 is required to be proved as it stands not admitted but disputed by the complainant and when the accused themselves are initially allegedly claiming requisite certificate having been obtained by complainant but having not been obtained so but pursuant to filing of this complaint to take contradictory plea of having obtained certificate of inspection from another authorised agency, AGMARK, which certificate are under dispute and the complainant dispute of the goods detained being not the one for*

which certificate of inspection are shown by the defence, the matter requires affording for reasonable opportunities to parties to lead evidences as triable, issues are raised which requires parties to be given requisite opportunities and the complaint outright cannot be dismissed."

9. Learned counsel for the respondent, relying on the reply, argued that the Director received a list of a monthly Import Detention List of food stuff exported from India and detained at various ports in USA due to contamination and improper labelling of the consignments. The petitioner company was named in the list. The Director was asked to look into the matter and submit a report. The complainant's Director wrote to the petitioners; in the reply to the letter the petitioner's stated that the consignment was inspected by the Export Inspection Agency, New Delhi and the statement was found untrue as per the company's record and so a complaint was lodged.

10. It was also submitted that before the trial court, the petitioners stated that their consignment was inspected by AGMARK which is also a competent agency for inspection and they also submitted certain certificates. It was urged that out of the three AGMARK certificates filed by the petitioners, two were dated 12.10.1990 and the 3rd one dated 1.11.1990, whereas the consignment was shipped on 30.10.1990. The quality shown in these certificates was Grade 'A' whereas the

quality per packing list is Indian Super Grade 'A'. Rule 4(3) and Sub-rule (1) says that intimation has to be furnished to the authorities two days before inspection and the records show that in the present case intimation was given on the same day and for the intimation dated 12.10.1990, the inspection was done 11.10.1990.

11. The question which arises for decision is whether the order of the trial court was issued wrongly, either without application of mind, or in excess of jurisdiction. The petitioner's challenge to the proceeding is two fold, i.e. that the complaint is lacking in precise details as to the commission of the offence; and that the materials on record, justify a quashing order, since the goods were duly inspected, by a competent agency, which issued the AGMARK certificate.

12. The complaint is premised upon information received through monthly import detention particulars, from the USFDA about improper labelling and contamination of the goods which were consigned by the petitioner. The material portion of the complaint reads as follows:

> *"7. That on the receipt of the above said letter of the Government of India, the complainant consignment of basmati rice for inspection from 6-10-1990 till 31-1-1991 and if so whether any certificate was issued to him for exporting rice to USA but found that the accused never obtained any certificate for exporting basmati rice during that period from Export Inspection Agency, Delhi.*

8. That finding that no such certificate was issued to the accused for exporting basmati rice the accused were approached to furnish a detailed report about the consignments of basmati rice exported by them to USA which were detained by USFDA and also to give teh name of the authority which issued the Inspection Certificate under the Act for exporting basmati rice to USA vide letter dated 31.8.1991. A copy of the same is being filed herewith as Annexure G.

9. That the accused gave no reply to the said letter dated 31-8-1991 till date. Cause of action arose on 31-3-1991 and the matter is within limitation..."

13. A reading of the order dated 14.10.2003 shows that besides the grounds urged in the course of these proceedings, it was also contended that the complaint was barred by limitation.

14. The principal basis for seeking intervention of the Court is the existence of documents, said to be certificates and the alleged absence of material pleadings, making out the offence. The relevant part of the complaint alleged that the petitioners did not respond, (when asked to do so) whether the necessary certificate of the agency had been issued to them, at the time of export of the goods. This was because by virtue of a Notification dated 14.9.1990, export of Basmati was prohibited unless a mark or seal recognized by the Central Government indicative of its confirming to the standard specifications was affixed or applied on the packages or containers on such rice and the further requirement of its

being accompanied by a Certificate / Grade / Inspection issued by the Agricultural Marketing Advisor to the Government of India or by any other agency specified under Section 7 of the 1963 Act, to that effect. The complaint refers to queries by the agency about existence of certificate by letter dated 31.8.1991. A copy of that letter was annexed and is a part of the record. Para 10 of the complaint adverts to reply dated 24.10.1991; a copy of the same is also a part of the record. Interestingly the letter dated 24.10.1991, of the petitioner merely gives certain explanations about what is meant by rejection, by the USFDA. According to the company the rejection was a routine practice, although an avoidable one. The reply no where mentioned about existence of any certificate by any authorized agency, or an AGMARK certificate, at the time of consignment.

15. It is no doubt true that in the course of proceedings, copies of certain AGMARK, grading certificates were filed. Interestingly, however, those certificates are dated 12.10.1990 and 1.11.1990. The respondent complainant has not accepted those documents and there is some doubt as to whether they relate to the consignments in question.

16. While dealing with a complaint under Section 200, the trial Court or the Magistrate as the case may be has to apply his mind before issuing a summoning order and not act mechanically. If the complaint and the

materials justifiably can lead to the inference that an offence as alleged is made out, issuance of process would be correct.

17. In the present case, the complaint in my considered opinion contains sufficient material for the Court to have, at the stage of issuance of process, formed the opinion that the petitioner had not complied with the provisions of law and that the offence under Section 11 of the 1963 Act had been made out inasmuch as false statements had been furnished to the Central Government. The materials also pointed, that the consignments had been rejected on account of contamination, a fact which has not been denied. In view of these, it would not be appropriate for this Court, to weigh the materials and conclude that copies of the AGMARK certificates issued in October/November, 1990 conclusively established that the petitioners were not guilty of the offences. This aspect is further highlighted by the doubts expressed by the complainant about the documents and whether they could have been used for the transactions that are the subject matter of the proceedings.

18. In the light of the above discussion, I am of the opinion that this not an appropriate case for intervention by the Court under Section 482 of the Criminal Procedure Code. The petition is accordingly dismissed.

(S.RAVINDRA BHAT)
JUDGE

APRIL 18, 2007